

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
RONALD W. CRIPPEN dba CRIPPEN
CONSTRUCTION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 86-58

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a notice and order of civil penalty of \$1,000 for causing or allowing an unpermitted outdoor fire containing prohibited materials in Tacoma, Washington came on for hearing before the Pollution Control Hearings Board on June 6, 1986. Seated for and as the Board were; Lawrence J. Faulk, Wick Dufford, and Gayle Rothrock (presiding). Respondent public agency elected a formal hearing, in accordance with Chapter 43.21B.230 RCW and the case was officially reported by Lisa Flechtner, Olympia court reporter.

1 Appellant appeared by its company owner R.W. Crippen. Respondent
2 PSAPCA appeared by Keith D. McGoffin, its legal counsel.

3 Witnesses were sworn and testified. Exhibits were admitted and
4 examined. Argument was heard. From the testimony, evidence, and
5 contentions of the parties the Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent PSAPCA is an activated air pollution control authority
9 operating under terms of the state Clean Air Act. They are empowered
10 to monitor and enforce open burning codes to maintain air quality in a
11 five-county area of mid Puget Sound. The agency has filed with the
12 Board a certified copy of its Regulation I, and all amendments
13 thereto, of which we take judicial notice.

14 II

15 Crippen Construction Company is a general contract construction
16 company in Tacoma. The company owns land at South 40th and Orchard
17 Street, adjacent to a large city landfill, where they've developed
18 part of the site into seven 4-plex residences. The owner expresses
19 the hope of constructing additional residences and landscaping the
20 whole site. Some illegal dumping has occurred on undeveloped areas on
21 the site in the past.

22 III

23 On September 25, 1985 a PSAPCA inspector in mid-afternoon
24 responded to an anonymous complaint about several fires near South
25 40th and Orchard emitting dense clouds of black smoke. He arrived at

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1 the Crippen site noting several separate piles of various types of
2 material burning and smoldering.

3 There were ties, mattress springs and frames, composition asphalt
4 roofing materials, painted wood, part of an auto body, a garden hose,
5 garbage, household refuse, and natural vegetation in the fire. Odor
6 was emerging from all the piles. Nine photographs were taken of the
7 fires during the 27 minutes the inspector was at the site.

8 During his time at the site the respondent inspector did not
9 encounter anyone attending the fires.

10 IV

11 Upon reviewing these developments the inspector determined there
12 was a violation of open burning regulations, at Section 8.02(3),
13 disallowing burning of prohibited material.

14 Further, he learned there existed no fire permit from Tacoma Fire
15 Department for this burning event and this was determined to be a
16 violation of Section 8.02(5) of PSAPCA's Regulation I. The inspector
17 did learn appellant Crippen had a Population Density Verification
18 issued by PSAPCA on August 5, 1985. Coming to these conclusions, he
19 prepared two Notices of Violation for Crippen Construction and left
20 notification for someone to contact PSAPCA.

21 V

22 On September 26, 1985 owner Ron Crippen and the PSAPCA inspector
23 were in contact and Crippen signed for receipt of the two violation
24 notices. He indicated some contact with the Tacoma Fire Department
25 relative to extinguishing the fires the previous day and was surprised

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1 to learn his contractors or employee weren't attending the fires. He
2 professed further surprise that prohibited materials were in those
3 same fires. His young employee who was monitoring the fires that day
4 did not notify him of that fact.

5 VI

6 There followed a Notice and Order of Civil Penalty (Number 6383)
7 issued to appellant Crippen on February 18, 1986 for \$1,000 for two
8 violations of PSAPCA's Regulation I on September 25, 1986; burning
9 prohibited materials and burning without a fire permit. From this
10 Crippen appealed to the Board for relief on March 20, 1986.

11 VII

12 Any Conclusion of Law which is deemed a Finding of Fact is hereby
13 adopted as such.

14 From these Findings, the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The Board has jurisdiction over these persons and these matters,
18 Chapters 43.21B and 70.94 RCW.

19 II

20 The Legislature of the State of Washington has enacted a
21 particular policy on outdoor fires, which policy mandates great care
22 and precaution be taken in managing fires such as the ones which are
23 the subject of this appeal.

24 It is the policy of the State to achieve and
25 maintain high levels of air quality and to this end
26 to minimize to the greatest extent reasonably
possible the burning of outdoor fires. Consistent

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1 with this policy, the legislature declares that
2 such fires should be allowed only on a limited
3 basis under strict regulation and close control.
RCW 70.94.740.

4 Here appellant failed to properly instruct his employee on the
5 requirement for burning only natural vegetation and the necessity of
6 being at the fire site, with dousing water available, at all times.

7 III

8 Pursuant to statutory authority, respondent PSAPCA has adopted
9 Regulation I, Section 8.02 which provides, at sub-section 3, that it
10 is unlawful to cause or allow an outdoor fire containing garbage, dead
11 animals, asphalt, petroleum products, paints, rubber products,
12 plastics, or a substance other than natural vegetation which normally
13 emits dense smoke or obnoxious odors.

14 The subject fires all contained prohibited materials and dense
15 smoke very clearly arose from the area.

16 IV

17 At Regulation I, Section 8.02(5) requirement is given to comply
18 with all applicable laws, rules for regulations of governmental
19 agencies having jurisdiction over such fires.

20 These fires were not authorized, by permit, through the Tacoma
21 Fire Department. Such permission has been required by PSAPCA
22 regulation since 1971.

23 Appellant Crippen did secure a burning permit from Tacoma Fire
24 Department shortly after the incident and commenced a lawful land
25 clearing burning again to finish preparing the site.

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V

Crippen has no previous record of warnings or violations on file with PSAPCA. He has been in general contract construction in that area for 15 years and should be familiar with air pollution regulations.

VI

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enter this

ORDER

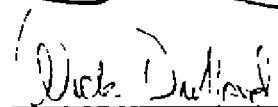
Notice and Order of Civil Penalty #6383 is affirmed.

DONE this 20th day of June, 1986.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Member


LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member

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